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In The

Supreme Court of the United States

October Term, 1960

No. 516

RIDGWAY NATIONAL BANK, BRUCE ISAACSON AND JOHN BELL, SUCCESSOR TRUSTEES under the Will of N. T. ARNOLD,

Appellants

v.

COMMONWEALTH OF PENNSYLVANIA,

Appellee

Appeal from the Supreme Court of Pennsylvania

MOTION TO DISMISS APPEAL

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INDEX

	Page
Motion To Dismiss Appeal:	
Counter-Statement of Questions Presented	2
Statement of the Case	3
Argument:	
I. Where the Court of Last Resort of a State Has Determined the Issue of Title to Land, Does the Case Present a Substantial Federal Question?	5
II. The Portion of the Judgment of the Court Below Which the Appellants Seek To Review, Rests on an Adequate Non-Federal Basis	7
Conclusion	8

TABLE OF CITATIONS

Cases:	
Dunham and Short v. Kirkpatrick, 101 Pa. 36 (1882)	6
Yuscavage v. Hamlin, 391 Pa. 13 (1958)	6
Statute:	
Act of March 29, 1832, P. L. 190, Section 32, Section 33	6

IN THE

SUPREME COURT OF THE UNITED STATES

No.

Ridgway National Bank, Bruce Isaacson and John Bell, Successor Trustees Under the Will of N. T. Arnold,

Appellants

v.

Commonwealth of Pennsylvania,

Appellee

MOTION TO DISMISS APPEAL

Appellee moves that the appeal from the final judgment of the Supreme Court of Pennsylvania in the present case be dismissed on the grounds that (a) the appeal does not present any substantial Federal questions; (b) that portion of the judgment of the court below which the appellants seek to review rests on an adequate non-Federal basis.

COUNTER-STATEMENT OF QUESTION PRESENTED

In the absence of any previous severance of the gas rights from the fee simple title to the land, either by express statement or by intent, did the conveyance from the Executors of N. T. Arnold, of the lands in question, include the gas estates therein.

STATEMENT OF THE CASE

On June 25, 1900, N. T. Arnold took title to four (4) parcels of land, consisting of three thousand, seven hundred and eighty-four and 35/100th acres in Clearfield County, Pennsylvania. N. T. Arnold, on the same day that he obtained title to the land conveyed "all the coal, coal oil, fire clay and other minerals of every kind and character in, upon and under" the lands in question. N. T. Arnold died August 4, 1906 and on May 31, 1909 Arnold's executors conveyed the lands in question to one B. F. Thompson, who later conveyed the lands to the Penfield Coal and Coke Company, predecessor in title to the Commonwealth of Pennsylvania.

On April 14, 1911, Arnold's trustees gave a quit claim deed to the Penfield Coal and Coke Company, which recited that it purported to release and quit claim to Penfield all the interest of Arnold in those certain pieces, parcels and tracts of land situate in Houston Township, Clearfield County. The Penfield Coal and Coke Company then conveyed the lands in question to the Commonwealth of Pennsylvania. The descriptions of the lands in the deed from the executors of N. T. Arnold to B. F. Thompson and the deed from Penfield Coal and Coke Company to the Commonwealth of Pennsylvania recited that it was a sale of surface lands.

The Common Pleas Court of Clearfield County held the title to the natural gas rights was in the Penfield

Coal and Coke Company. On appeal to the Pennsylvania Supreme Court, in which all parties joined, the decision of the lower Court was reversed and the Supreme Court of Pennsylvania held that a conveyance of the surface lands did not effect a severance of the natural gas rights from the surface.

Devorian Gas and Oil Company, claiming under the title of the Penfield Coal and Coke Company filed a Petition to the Supreme Court of the United States for a Writ of Certiorari contending that the Supreme Court of Pennsylvania erred in ruling that a sale of surface lands carried with it title to the gas and oil. Upon motion of the Commonwealth of Pennsylvania, this Writ of Certiorari was dismissed. The present appeal to the U. S. Supreme Court raises the same question.

ARGUMENT

I. WHERE THE COURT OF LAST RESORT OF A STATE HAS DETERMINED THE ISSUE OF TITLE TO LAND, DOES THE CASE PRESENT A SUBSTANTIAL FEDERAL QUESTION?

It is a well established principle of constitutional law that the power to regulate property within the limits of the state, the modes of acquiring and transferring it and the rules of descent and distribution of property are subject belonging exclusively within the jurisdiction of the state. The Supreme Court of Pennsylvania has followed well established principles of Pennsylvania law to determine that the conveyance from the Executors of N. T. Arnold to B. F. Thompson did not effect a severance of the gas rights and that these gas rights, by subsequent conveyances, became the property of the Commonwealth of Pennsylvania. The Supreme Court of Pennsylvania stated in its opinion that the proceedings in the Orphans' Court indicated a clear intention to sell all of the interest of N. T. Arnold in the lands in question and no intention that there be a severance of the natural gas rights from the realty. The Supreme Court of Pennsylvania further states that the deed in question showed a clear intent that the gas rights were not to be severed from the surface and that it was specifically set forth that the gas rights were to be included.

The decisions of the Pennsylvania Courts have established that gas and oil rights are not severed from

the surface unless that intention is specifically set forth. This has been the rule of law since the early case of *Dunham and Short v. Kirkpatrick*, 101 Pa. 36 (1882), including the more recent case of *Yuscavage v. Hamlin*, 391 Pa. 13 (1958).

The Appellant has misconstrued the import of the decision of the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania has not misconstrued, overruled or ignored the *Act of March 29, 1832, P. L. 190, Section 32, Section 33*, which requires that the Executors exhibit to the Court a full and correct statement of all the deceased's realty. The Supreme Court of Pennsylvania has stated that a listing of the surface lands and a deed later conveying those surface lands is sufficient to include the gas rights unless an intention is indicated to exclude them from the surface.

The laws of Pennsylvania are clear and certain as to the principles involved and these principles of state law are binding in so far as they determine the property rights of the parties.

II. THE PORTION OF THE JUDGMENT OF THE COURT BELOW WHICH THE APPELLANTS SEEK TO REVIEW, RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

The Supreme Court of Pennsylvania recited as an additional reason for its ruling, the quit claim deed from the successor trustee of the N. T. Arnold Estate to the Penfield Coal and Coke Company, which deed stated an intention to invest "all the estate of the said N. T. Arnold in said lands in the party of the second part hereto". The Supreme Court of Pennsylvania, in its Opinion, states as follows:

> *"A scrutiny of that deed clearly reveals that it was understood by and intended by Arnold's trustees that Penfield acquire all Arnold's interest in and under the land in question. Penfield, by these successive conveyances, acquired title to all the natural gas rights which Arnold had once owned and the Arnold group has presently no rights whatsoever to the natural gas under Parcels 1, 2, 3 and 4."*

It is clear that the construction of this quit claim deed is entirely within the province of the Supreme Court of Pennsylvania. The Appellant has not in fact refuted this point in his argument.

It is clear then that the Decision of the Supreme Court of Pennsylvania does rest on an adequate non-Federal basis.

CONCLUSION

No substantial Federal question has been presented by the Appeal in the present case. The Decision of the Supreme Court of Pennsylvania can be sustained on an adequate non-Federal basis.

Accordingly, the Appeal should be dismissed.

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